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OFFICE

PATENT

Nov 23 01

PATENT

TRADEMARK
DIVISION

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicants : Michael T. Kelly et al.

Application No. : 09/043,813

Filed : September 29, 1998

For : CYCLIC DECAPEPTIDE ANTIBIOTICS

Examiner : Anish Gupta

Group/Art Unit : 1600/1653

Docket No. : 850103.40301

Date: : November 14, 2001

Attention: Office of Petitions

Commissioner for Patents

Box DAC

Washington, DC 20231

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01 FC:117
02 FC:241

COMMUNICATION and

OFFICE OF PETITIONS

460.00 OP
640.00 OP

RESPONSE TO OFFICE ACTION

Sir:

I have reviewed the Office Action dated December 20, 2000 (Paper No. 20) and the rejections set forth therein. The present Communication is a request that subject application be returned to OIPE for further processing, for reasons outlined below.

On November 9, 2000, a Request for Continuing Prosecution Application (CPA) was filed with the USPTO. The CPA included a check for payment of the fee for the requisite 3-month extension of time. However, payment of the basic filing fee was not included with the filing of the application. Furthermore, a Revocation of General Authorization Under 37 C.F.R. § 1.136(a)(3) was filed concomitant with the filing of the CPA, stating that the (Assistant) "Commissioner is no longer authorized to charge any fees which may be required under 37

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C.F.R. § 1.16 and 1.17...". In other words, the filing fee for this application has not been paid.

A copy of the Revocation is enclosed for your convenience and reference.

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Applicants respectfully submit that subject application should be returned to ~~PATENT~~ ~~OFFICE~~ ~~DIVISION~~ for further processing, so that the Applicants have an opportunity to pay the filing fee for the application, and place the application into proper form.

As to the double patenting rejection, Applicants respectfully submit that it is premature to address this issue, since the Application should not be examined until the filing fee has been paid. However, Applicants do not agree with the Examiner's position. Nevertheless, Applicants are currently seeking to obtain a Terminal Disclaimer, which should be available in the next few weeks. The Examiner is encouraged to contact the undersigned at (206) 622-4900, should further communication be required to resolve this matter.

Respectfully submitted,

SEED Intellectual Property Law Group PLLC



David W. Parker
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DWP:scr

Enclosure(s):

Copy of Revocation of General Authorization
Under 37 C.F.R. § 1.136(a)(3), filed November 9, 2000

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